

Staff Summary Report



Council Meeting Date: 07/10/03

Agenda Item Number: 36

SUBJECT: Request to amend IGA FCD 99003, an agreement with the Flood Control District of Maricopa County for the Guadalupe Drainage Improvements Project, authorizing a time extension of five (5) years in which the City of Tempe must implement the design and construction of a pump station.

DOCUMENT NAME: 20030710PWTG04 **FLOOD CONTROL ADMIN. (0808-01) IGA FCD 99003 Town of Guadalupe Drainage Improvements Project**

SUPPORTING DOCS: Yes

COMMENTS: The Guadalupe Drainage Improvements Project (IGA FCD 99003) was originally authorized through the Maricopa County Flood Control District Board of Directors and the City of Tempe (File No. 99-68) on April 21, 1999. The original agreement stated that the pump station for the ADOT "pit" would be designed and constructed within five (5) years of the recording date of the IGA. Because of budget constraints, Tempe has requested a five (5) year time extension to be in effect from 2004 – 2009 in which to implement the design and construction of the pump station. Tempe will own, operate and maintain the completed pump station.

PREPARED BY: JAN HORT, ENGINEERING SENIOR MANAGEMENT ASSIST. (x8250)

REVIEWED BY: ANDY GOH, DEPUTY PW MANAGER/CITY ENGINEER (x8896)

LEGAL REVIEW AS TO FORM: RON DUNHAM, ASSISTANT CITY ATTORNEY (x8814)

FISCAL NOTE: There is no change to the financial impact on the City. The estimated cost to the City is \$375,000 plus 100% of the costs in excess of \$750,000 to be budgeted in future years.

RECOMMENDATION: Approve Intergovernmental Agreement Amendment (IGA) FCD 99003B with Flood Control District of Maricopa County authorizing a time extension within which to implement the design and construction of the Guadalupe pump station.

Approved by Glenn Kephart, Public Works Manager

When Recorded Return to:
Contracts Branch
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009

**AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
FCD 99003**

for the

Design, Construction and Operation and Maintenance for the Pump Station

of the

Town of Guadalupe Drainage Improvements Project

between the

City of Tempe

and the

Flood Control District of Maricopa County

IGA FCD 99003B

Agenda Item: C-69-99-081-2-02

This Amendment Intergovernmental Agreement (IGA) FCD 99003B to IGA FCD 99003 is entered into between the Flood Control District of Maricopa County, a municipal corporation and political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter called the DISTRICT, and the City of Tempe, an Arizona municipal corporation, hereinafter called TEMPE.

This Amendment IGA FCD 99003B to IGA FCD 99003 shall become effective as of the date it has been executed by all parties.

DATE FILED WITH THE MARICOPA COUNTY RECORDER _____.

STATUTORY AUTHORIZATION

1. The DISTRICT is empowered by Arizona Revised Statute (ARS) Section 48-3603, as revised, to enter into this Amendment and has authorized the undersigned to execute this Amendment on behalf of the DISTRICT.
2. TEMPE is empowered by ARS Section 11-952 to enter into this Amendment and by Tempe City Charter Section 1.03 to contract for services or jointly exercise any powers common to the contracting parties and to enter into agreements with joint and cooperative action, and has authorized the undersigned to execute this Amendment on behalf of TEMPE.

BACKGROUND

3. The Guadalupe Drainage Improvements Project was originally authorized through the Board of Directors of the Flood Control District of Maricopa County adoption on January 17, 1996 of project Resolution FCD 95-12 (C-69-96-015-6-00), which authorized and directed the Chief Engineer and General Manager of the DISTRICT to negotiate IGAs for the project, the contracting for consultant design services, and acquisition of rights-of-way. The Board of Directors of the DISTRICT (Board) approved project IGA FCD 99003 with the City of Tempe on April 21, 1999.
4. The Board approved Amendment IGA FCD 99003A authorizing the modification of the project from a 100-year level of protection to a 10-year level of protection on October 18, 2000. The 10-year system reduced the size of project features such as basins and storm drains, and retained design and construction of a pump station by the City of Tempe at the Arizona Department of Transportation (ADOT) "Pit", which functions as a regional drainage outfall.
5. The original IGA stated that the pump station would be designed and constructed within five (5) years of the recording date of the IGA; that being April 27, 1999. Due to budget constraints, TEMPE has requested a time extension to implement the design and construction of the pump station.

PURPOSE OF THE AGREEMENT

6. The purpose of this Amendment is to redefine the time frame for implementation of the pump station design and construction by TEMPE.

TERMS OF AGREEMENT

7. TEMPE will implement the design and complete the construction of the pump station and make a complete accounting of all expended funds within five (5) years from the recording date of this Amendment. Should TEMPE not complete construction of the pump station and make the final accounting of all expended funds within this time frame the DISTRICT's original IGA cost-share obligations for the pump station will be terminated.
8. This Amendment governs where terms conflict with the original IGA FCD 99003 or Amendment IGA FCD 99003A. However, the original IGA FCD 99003 and Amendment IGA FCD 99003A are applicable unless specifically changed by this Amendment. The paragraph numbering in this Amendment is coincidental and is not intended to indicate that these same numbered paragraphs in the original IGA FCD 99003 are being replaced in their entirety.
9. Nothing in this Amendment (whether express or implied) is intended to confer upon any party other than the parties hereto and their respective representatives, successors, and permitted assigns, any rights or remedies under or by reason of this Amendment, nor is anything in this Amendment intended to relieve or discharge the liability of any party hereto except as provided in paragraph 11.
10. In the case of any dispute over any items in this Amendment, the parties agree to use their best efforts and enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the parties to seek any remedies provided by law.

11. Each party to this Amendment (indemnitor) shall, to the extent legally permissible by law, indemnify, defend and save harmless the others (indemnitee) including, agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever which arises out of indemnitor's negligent or wrongful acts or omissions pursuant to this Amendment. Such indemnification obligation shall encompass any personal injury, death or property damages resulting from the indemnitor's negligent or wrongful acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigation incurred by the indemnitees. Indemnitees shall be liable for their own negligence or wrongful acts as provided by law.
12. All notices or demands upon any party to this Amendment shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Flood Control District of Maricopa County Chief Engineer and General Manager 2801 West Durango Street Phoenix, Arizona 85009	City of Tempe City Engineer 31 East Fifth Street Tempe, Arizona 8528
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13. This Amendment shall expire six (6) years from the date of recording with the Maricopa County Recorder or completion of the Project whichever is the first to occur. However, by mutual written agreement of each party, this Amendment may be amended or terminated.
14. This Amendment is subject to cancellation by either party pursuant to the provisions of ARS §38-511.
15. Attached to this Amendment or contained herein are the written determinations by the appropriate attorneys for the DISTRICT and TEMPE that these agencies are authorized under the laws of the State of Arizona to enter into this Amendment and that it is in proper form.
16. If legislation is enacted after the effective date of this Amendment that changes the relationship or structure of one or more parties to this Amendment, the parties agree that this Amendment shall be renegotiated at the written request of either party.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
A Municipal Corporation

Recommended by:

Michael S. Ellegood, P.E. Date
Chief Engineer and General Manager

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

This Amendment IGA FCD 99003B to Intergovernmental Agreement IGA FCD 99003 has been reviewed pursuant to ARS §11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the DISTRICT under the laws of the State of Arizona.

General Counsel Date

CITY OF TEMPE

CITY OF TEMPE
Neil G. Giuliano, Mayor

By: _____
Neil G. Giuliano Date
Mayor

Attest:

By: _____
City Clerk Date

This Amendment IGA FCD 99003B to Intergovernmental Agreement IGA FCD 99003 has been reviewed pursuant to ARS §11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the powers and authority granted to the City of Tempe under the laws of the State of Arizona.

By: _____
City Attorney Date